IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

MISSOURI CHAMBER OF COMMERCE AND INDUSTRY,	)	
Plaintiff,	)	
v.	)	Case No. 17AC-CC00515
MISSOURI ETHICS COMMISSION,	)	
and	)	
JAMES KLAHR,	)	
Defendants.	)	

JUDGMENT

This matter came before the Court for a bench trial on March 22, 2018. Plaintiff appeared by counsel, Lowell Pearson. Defendants appeared by counsel, Ryan L. Bangert and Emily A. Dodge. The parties submitted a joint stipulation of facts and two exhibits. The Court also heard arguments of counsel for the parties. The parties agree that this Court has jurisdiction, that venue lies in this Court and that Plaintiff has standing. Based on the record, the arguments presented, and the applicable law, the Court hereby enters Judgment in favor of Defendants.

I.

The Court first addresses Defendants' Motion for Substitution of Parties. Three of the defendants named in Plaintiff's Petition were

commissioners of the Missouri Ethics Commission when this case was filed. The terms of office of those three commissioners (Nancy Hagan, Bill Deeken, and Eric L. Dirks) expired on March 15, 2018, and their offices are currently vacant. No member of the Ethics Commission may serve on the Commission after the expiration of his or her term of office. Section 105.955.3 RSMo. The Missouri Senate must confirm nominees for the position of commissioner of the Missouri Ethics Commission. Section 105.955.1 RSMo. The governor has not yet appointed any person to fill the vacancies on the Missouri Ethics Commission. Therefore, the Court substitutes the office of Commissioner of the Missouri Ethics Commission as the property party defendant in place of Nancy Hagan, Bill Deeken, and Eric L. Dirks.

II.

Background

In November, 2016, Missouri voters passed Amendment 2.[1] Amendment 2 added a new section, Section 23, to Article VIII of the Missouri Constitution, entitled the "Missouri Campaign Contribution Reform Initiative." Mo. Const., art. VIII, § 23.1. The Missouri Chamber seeks a declaratory judgment that Amendment 2 permits a corporation to contribute to its connected PAC. Defendants, in turn, argue that

[1] Amendment 2 became effective at the end of the 30th day after the November 8, 2016 general election.

Amendment 2 allows a corporation to use its own funds to establish, administer and maintain a connected PAC, but bars a corporation from making contributions of its own funds to its connected PAC.

Conclusions of Law

Article VIII, section 23 of the Missouri Constitution, which is also referred to as Amendment 2, imposes a number of requirements relating to the financing of Missouri elections, including requirements with respect to the types of contributions that may be made by corporations such as Plaintiff Missouri Chamber of Commerce and Industry.

A corporation may not contribute to committees associated with, *inter alia*, candidates or political parties. Mo. Const. art. VIII, § 23.3(a). Specifically, Section 23.3(a) bars a corporation from contributing to "a campaign committee, candidate committee, exploratory committee, political party committee or a political party[.]" *Id.* However, Section 23.3(a) provides as an exception to this general prohibition that a corporation "may establish a continuing committee which may accept contributions or dues from members, officers, directors, employees or security holders." *Id.*

A corporation that expends its own funds or provides services to "establish, administer or maintain" a continuing committee (referred to by the parties as a "connected PAC") and to solicit contributions to that continuing committee from its members and employees, is called a "connected

organization." *Id.* § 23.7(6)(d). Amendment 2 defines "connected organization" as follows:

> [A]ny organization such as a corporation, a labor organization, a membership organization, a cooperative, or a trade or professional association which expends funds or provides services or facilities to establish, administer or maintain a committee or to solicit contributions to a committee from its members, officers, directors, employees or security holders.

Id.

Read together, Sections 23.3(a) and 23.7(6)(d) make clear that while a corporation may not make direct contributions to committees tied to candidates or political parties, it may create, support and control its own PAC that may, in turn, make such contributions, provided the PAC is not funded with the corporation's own money. The connected PAC, in turn, may make various election-related expenditures—such as contributing to candidate committees—that a corporate connected organization may not. If a corporation wishes to "maintain" or "administer" a connected PAC, it may not contribute its own funds to that PAC, but it may solicit contributions to the PAC from its own directors, officers, employees, members, and shareholders. *Id.* § 23.3(a); *see also id.* § 23.7(6)(d).

By permitting connected PACs to receive contributions from corporate directors, officers, employees, members and shareholders but *not* the

corporation itself, Amendment 2 prevents corporations from circumventing the prohibition on corporate contributions to candidates and political parties. Without that important limitation, corporations could evade Section 23.3(a)'s prohibitions by simply creating a connected PAC, contributing corporate funds to that PAC, and then directing the PAC to contribute to candidates or political parties of the corporation's choice.

Plaintiff raises several objections to this commonsense interpretation of Amendment 2, but none of them persuade. First, Plaintiff argues that nowhere in Amendment 2 is there an express prohibition on a corporation contributing directing to its connected PAC. That argument ignores the interplay of Sections 23.3(a) and 23.7(6)(d) discussed above. It also would make portions of Amendment 2 superfluous. For instance, the definition of "contribution" excludes the "direct or indirect payment" by a connected organization "of the costs of establishing, administering, or maintaining a committee." *Id.* § 23.7(7)(h). Those costs include "legal, accounting and computer services, fund raising and solicitation of contributions for a committee." *Id.* That language would be unnecessary if a corporation could freely contribute its own funds to its connected PAC. The Court will not adopt an interpretation that renders portions of Amendment 2 "surplusage." *State Hwys & Transp. Comm'n of Missouri v. Dir., Missouri Dept. of Revenue*, 672 S.W.2d 953, 955 (Mo. banc 1984) (providing that every word in the Missouri

Constitution must be given meaning, and cannot be ignored as mere surplusage).

Second, and relatedly, Plaintiff argues that Section 23.3(a) does not list "connected organization" among the entities to which a corporate contribution is unlawful. That argument suffers from the same flaws as Plaintiff's first argument. Also, it ignores that Section 23.3(a)'s list of entities to which a corporation may not contribute is followed by the word "except," which makes clear that the formation by a corporation of a connected PAC that it controls provides a limited exception to Section 23.3(a)'s general prohibition. Specifically, it allows a mechanism for corporate *officers, directors, employees* and others associated with the corporation—but not the corporation itself—to make contributions to a PAC that the corporation administers, and that the corporation may direct to contribute to candidates and political parties.[2]

Third, Plaintiff argues that because a corporation may act only through its officers and directors, Section 23.3(a) explicitly permits contributions directly from a corporation through its officers and directors. To the extent Plaintiff argues that Section 23.3(a) empowers corporate officers and

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[2] Indeed, this purpose is apparent in the definitions of "continuing committee" and "political action committee," which provide that those types of committees include, but are not limited to, "any committee organized or sponsored by a business entity ... or other organization and *whose primary purpose is to solicit, accept and use contributions from the members, employees or stockholders of such entity ....*" *Id.* § 23.7(6)(c) (emphasis added); *id.* § 23.7(20) (emphasis added).

directors to commandeer corporate assets for their own purposes, that reading must be rejected as absurd and against public policy. Corporate officers or directors do not have a right to convert [corporate] assets to their own use, or give them away ...." *Zakibe v. Ahrens & McCarron, Inc.*, 28 S.W.3d 373, 383 (Mo. App. E.D. 2000) (quoting cases). The better reading, and the reading that comports with the plain text, is that Amendment 2 allows corporate officers and directors to contribute to their corporation's connected PAC.

Fourth, Plaintiff contends that Section 23.3(12), which permits political action committees to receive contributions from corporations, "explicitly permits contributions from a corporation to a connect[ed] PAC." That argument would read out of Amendment 2 all of the provisions concerning connected organizations. If a corporation could contribute to *any* PAC regardless of whether the PAC were connected to the corporation, there would be no need to delineate the persons who may contribute to a connected PAC, and no need to exempt from the definition of "contribution" money spent by a connected organization to maintain and administer a connected PAC. The Court will not nullify entire swaths of Amendment 2. *State Hwys & Transp. Comm'n of Missouri*, 672 S.W.2d at 955

Based upon the stipulated facts and the applicable law, the Court directs that judgment in Defendants' favor and DENIES Plaintiff's request for declaratory relief.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all other claims for relief not expressly granted herein are deemed denied.

SO ORDERED this 24 day of April, 2018.

Honorable Patricia S. Joyce,
Circuit Judge